GOVERNMENT OF MYSORE.

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR)

Labour Dispute:—Industrial Dispute between the Workmen and the Management of Bangalore Printing and Publishing Co., Ltd., Bangalore.

Award of the Additional Industrial Tribunal, Bangalore—published.

Read the following papers :—

(i) Letter No. I.T. No. 141/66-67, dated 31st December 1966. from Shri V. C. Ramachandran, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated : 0th December 1966.

Present :

Sri V. C. Ramachandran, B.Sc. (Lond), Bar-at-Law, *Presiding Officer.*

A.I.T. No. 2 of 1966
(I.D. No. 131 of 1966)

The Workmen of the Bangalore Printing and Publishing Co., Ltd., Bangalore ... *I Party.*

Vs.

The Management of the Bangalore Printing and Publishing Co., Ltd., Bangalore ... *II Party.*

Appearances :

For the First Party :—Sri A. Venkatram, Secretary, Bangalore Press Labour Union, Mysore Road, Bangalore.

For the Second Party :—Sri B. Gopaliah, M.A., M.L., Advocate, Bangalore.

Reference :

(Government Order No. PLM 249 LLD 66, dated 28th June 1966).

AWARD

This is a Reference made under Section 10 (1) (d) of the Industrial Disputes Act, 1947, by the Government of Mysore, on the following points of dispute :—

"Is the Management of Bangalore Printing and Publishing Company Ltd., Mysore Road, Bangalore-18 justified in not paying Bonus for the year 1964 for the following

persons who have left the services on the ground that they sustained loss and a certain similar dispute is pending in the Supreme Court ?

(a) L. Keshaviah,
(b) Shivananda,
(c) Basavaiah,
(d) Mallikarjunaiah,
(e) H. B. Narayana Rao,
(f) N. Rajagopala,
(g) R. Puttaramiah,
(h) R. Ram Singh,

2. Is the Management of Bangalore Printing and Publishing Company Limited, Mysore Road, Bangalore-18, is justified in not paying the Dearness Allowance to the Apprentices employed by them ?".

The Reference was made originally to the Industrial Tribunal, Bangalore, and the case was registered as I.D. No. 131 of 1966. By Order No. LMA 595 LLE 66, dated 29th November 1966, the Government of Mysore, have withdrawn this case from the file of the Industrial Tribunal and transferred to this Tribunal for disposal. It was then registered by this Tribunal as A.I.D. No. 22 of 1966.

The dispute is, between the Workmen of the Bangalore Printing and Publishing Co., Ltd., Bangalore. who will be referred to hereinafter as I Party and the Management of the Bangalore Printing and Publishing Co., Ltd., Bangalore, will be referred to hereinafter as II Party. The I Party contends that the II Party had paid the minimum bonus to the workers as provided in the Payment of Bonus Act, 1965, but refused to pay the said bonus to the persons named in the reference on the ground that they have left their employment during the year 1964. They submit that the bonus is payable to all the workers who have worked in the Bonus year for 30 days or more and, therefore, those persons who resigned during the year 1964 are also entitled to the payment of bonus. The I Party further stated that the II Party have employed several workers who are miscalled apprentices and that they are not in reality learners but actually full-fledged workers. They are so denominated for the purpose of avoiding the benefit of Dearness Allowance. They submit that they should also be paid Dearness Allowance as other workers of the Company in the industry and that the Bonus be paid to those who resigned in 1964 and that the so-called apprentices may be paid Dearness Allowance.

3. The II Party resisted the claims of the I Party on the ground that the question of payment of bonus to the employees is covered by a Settlement arrived at during the Conciliation dated 18th November 1963 which is still in force. According to that settlement no bonus is payable to the employees who voluntarily

leaves the service of the Company except on retirement. It further alleged that the working of the Company did not leave any available surplus for the year 1964 and the employees therefore cannot claim bonus. The employees have resigned in 1964 and therefore, not entitled to get any bonus. One of the employees mentioned in the Reference viz., Basaviah is dismissed for committing theft and as such he is not entitled for any bonus. So far as the claim for Dearness Allowance to the Apprentices is concerned, it is submitted that no demands for emoluments for the period of training can be made. The II Party prays that the demands of the I Party may be rejected and the reference be answered in their favour.

4. Apart from the points of dispute mentioned in the Order of Reference, the following Issues were framed by the Industrial Tribunal.

1. "As contended by the II Party, is the question of Payment of Bonus to the employees, covered by the Settlement during conciliation between the I Party Workmen and the II Party Management, dated 18th November 1963? And is it still in force.
2. Is it true that according to clause (2) of the Settlement, no bonus is payable unless a minimum dividend specified therein is paid to the shareholders of the Company?
3. Is it true that under clause 6 (3) no employee who voluntarily leaves the service of the Company, except when he retires, is entitled to the bonus?
4. Is it correct to say that Section 34 of the Payment of Bonus Act, 1965, has been struck down by the Hon'ble Supreme Court of India as it is violative of the Constitution, and the terms of the settlement continue to apply so long as the provisions of the settlement are in force?
5. Was the II Party's financial position in the year 1964 such as not to leave any available surplus to meet the demands of the I Party-workmen for bonus?
6. As contended by the I Party, is it open to the II Party to fall back upon the settlement of 18th November 1963, especially having paid the bonus under the payment of Bonus Act, for the year 1964 to the workers?
7. Is the settlement superseded by the provisions of the Payment of Bonus Act, 1965?

8. Are the claims of the I Party workmen not covered by Section 34, is having been struck down by the Hon'ble Supreme Court ?

9. To what reliefs, are the Parties entitled ?"

5. The Management have examined the Secretary of the Bangalore Printing and Publishing Co. The settlement entered into between the Management and the Workmen dated 19th September 1963 is marked as Ext. M. 3. The workmen referred to in the Reference had all resigned in the year 1964 and 1965. It is further stated by the Secretary that there were no apprentices in the Company on the date of Reference. The I Party examined one, T. Robert, who deposes that there are 20 members working as apprentices having put in service ranging upto 5 years. He has given a list of so-called apprentices as per Ext. W-1.

6. The second point of dispute referred to this Tribunal viz. is the Management of Bangalore Printing and Publishing Co., Ltd., Mysore Road, Bangalore-18, justified in not paying the Dearness Allowance to the Apprentices employed by them, does not appear to be happily worded. It does not refer to any particular employees who according to the I Party are apprentices and who are not getting allowances. Whether the Apprentices in this case are entitled to get Dearness Allowance or not is now governed by Apprentices Act, 1961, under which the emoluments of the Apprentices are prescribed. They are not entitled under the Act to any Dearness Allowance but the employer shall pay every apprentice during the period of Apprenticeship training such stipend at a rate not less than the prescribed minimum rate as may be specified in the contract of apprenticeship and the stipend so specified shall be paid at such intervals and subject to such conditions as may be prescribed. An apprentice shall not receive any other payment from his employer nor shall be be paid on the basis of piece work or required to take part in any out put bonus or other incentive scheme. In view of the provisions under the Apprentices Act, the Apprentices are not entitled to any Dearness Allowance.

7. But the question, however, is purely academic because in the industry with which we are concerned now, there are no apprentices according to the Management itself. The persons mentioned in the list of so-called apprentices furnished by the workmen are not, according to the Management, apprentices at all but they are regular workmen. They are entitled to all allowances as rest of the workmen in the industry. The Management have also

filed a further statement to the effect that the second point mentioned in the Order of Reference made by the Government is not valid and becomes purely academical since there was no person working as apprentice in the employ of the II Party on the date of Reference. My answer therefore, to the second point of dispute is that the apprentices are not entitled to any Dearness Allowance under Apprentices Act, 1961 and as there are no apprentices in the industry with which we are concerned, that question is purely academical and all the persons who were working in the industry at the time of the reference are entitled to Dearness Allowance and such other allowances as were being paid to the workmen.

8. The main dispute in this case is with regard to the payment of Bonus to 8 persons mentioned in the Reference. It is not disputed that these 8 persons have worked for sometime at any rate during the year 1964. The Bonus is demanded for the year 1964 and the other workmen in the industry have been paid bonus for that year at the rate of 4 per cent of their wages being the minimum bonus under the payment of Bonus Act. The short question for consideration in this case is whether the Payment of Bonus Act applies in the case of the employees referred to in the Reference. The Payment of Bonus Act came into force in 1965 but the provisions of the Act applies to the Bonus in respect of the accounting year commencing on any date in the year 1964. The claim for bonus for 1964 is, therefore, within the Payment of Bonus Act, 1965, and the II Party workmen are entitled to the minimum bonus at least to which they claim under Section 10 of the Bonus Act under which every employer shall be bound to pay every employee in an accounting year a minimum bonus which shall be 4 per cent of the salary or wages earned by the employee during the accounting year whether there are profits in the accounting year or not. The only disqualification for claiming the bonus is when the employee is dismissed from service for fraud, riotous behaviour or theft or misappropriation of the property of the establishment. So far as these workers are concerned, all them had resigned from the employment except Basavish who was dismissed for theft on 25th April 1964. There is nothing to show that the dismissal of Basavish for theft was wrongful malicious or the result of victimisation or unfair labour practice. It must be presumed, therefore, that the dismissal of Basavish was for the theft of Company's Property and therefore, he is not entitled to bonus as he comes within the disqualification for payment of Bonus under Section 9 of the Payment of Bonus Act.

9. So far as the other persons named in the Reference are concerned, they have worked, if not fully, at least part of

the year 1964 and hence they are entitled to the payment of bonus or at least proportionate bonus according to the number of days they worked during the accounting year. The claim for bonus of these employees was resisted by the Management on the ground that the Payment of Bonus Act does not apply to them as they were no longer in the service of the Company, having left the services of the Company prior to the Payment of Bonus Act coming into force.

10. The learned Counsel for the II Party contended that the Bonus is payable under the Act only to these persons who continued to be in employment of the Industry on the date the act came into force i.e., in September 1965 and that bonus cannot be claimed by the employees who left the service of the Company prior to that date. In support of his contention, he has relied upon Section 21 of the Act under which according to him only certain sections *viz.*, Sec. 21 to 25 apply in the case of of employees who are no longer in employment of that particular industry. The learned Counsel contended that so far as the other Sections of Bonus Act are concerned, they apply to only to persons who continued to be in service on the date the Payment of Bonus Act came into force and not to the employees who had ceased to be in employment in that industry. I am unable to accept that contention because the scheme of the Act as well as other sections of that Act clearly show that the object is to pay to all the employees who have been in the employment during any accounting year for which bonus is claimed. It seems to me illogical to deprive one set of workers the bonus which was paid to the other set of workers simply because they have not worked throughout the year. What the Bonus Act contemplates under those circumstances is to reduce the bonus payable to workmen who had not worked throughout the year proportionately. Under Section 13 of the Act, where the employee has not worked in all the days in the accounting year, the bonus payable to him shall be proportionately reduced. The only condition laid down is he must have worked for not less than 30 working days in that year. The entire act refers to the employee working in the accounting year and it is immaterial whether those employees worked in subsequent accounting year or not. I shall refer to a few Sections of the Bonus Act to show that the bonus is payable to all the employees who worked during the whole of the accounting year or part of the Accounting year.

Section 1 (4) of the Act states that the Act shall have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year. We

are concerned in this case with the accounting year 1964. Section 10 binds every employer to pay every employee in an accounting year a minimum bonus which shall be 4 per cent of the salary or wages. It is clear, therefore, that all employees in that accounting year are entitled to bonus. The perrsons named in the Reference were employees in that accounting year and therefore, entitled to bonus except in the case of Basaviah who is disqualified for bonus on account of theft.

11. The Learned Counsel for the II Party contended that there is a settlement which disentitles the employees in question from claiming bonus as under Section 6 (3) of that settlement no employee who voluntarily leaves the services of the Company except when he retires is entitled to bonus declared for the year concerned. In the first place, the settlement is not operative. In view of section 34 (1) of the Payment of Bonus Act under which the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any settlement made before 29th May 1965. The Settlement was made on 19th September 1963 and is therefore unenforceable in view of the provisions of the Payment of Bonus Act. No authority is being shown to hold that Section 34 (1) is *ultra vires*. If that Section is *intra vires*, the settlement has no effect and bonus has to be paid for the accounting year 1964 only under the Payment of Bonus Act.

12. My answer to the other Issues framed are as follows:—

(1) The Settlement dated 18th November 1963 with regard to the payment of Bonus to the employees is not in force and has been superseded by the payment of Bonus Act. In view of that answer, Issues 2 and 3 will not arise.

(4) Section 34 of the payment of Bonus Act is applicable to the question of Bonus and therefore the terms of settlement do not apply to the workers mentioned in the Reference.

(5) The Employer is bound to pay a minimum bonus of 4 per cent of the salary or wages in respect of financial year 1964.

The answer to the other Issues is that the payment of Bonus Act governs this case and the employees mentioned in the Reference are entitled to payment under the Bonus Act according to the number of working days they have been put in service of the II Party at the rate of 4 per cent of their wages or salary during the accounting year 1964.

12. In the result, I pass the following Award.—

AWARD.

The II Party viz., the Management of the Bangalore Printing and Publishing Co., Ltd., Bangalore-2, do pay Bonus for the accounting year 1964 to the employees in the Reference except Basaviah in accordance with Sections 10 and 13 of the Payment of Bonus Act. The employee, Basaviah, is disqualified from receiving any bonus in the accounting year 1964 as his services were terminated due to theft of the property of the Company.

The II party do also pay to all the workers who were on the rolls of the Company on the date of Reference Dearness Allowance and such other Allowances to which they were entitled to on that day.

The II party do pay costs to the I party which is fixed at Rs. 50.

V. C. RAMACHANDRAN,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

ORDER.

Bangalore, dated 10th January 1967.

S. O. 205.— WHEREAS by State Government Order No. PEM 249 LLD 66, dated 28th June 1966 the Industrial Dispute between the Workmen and the Management of Bangalore Printing and Publishing Co., Ltd., Bangalore was referred to the Industrial Tribunal, Bangalore for adjudication;

AND WHEREAS the Additional Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above in the *Mysore Gazette*.

[No LMA 249 LLD 66]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT, *Under Secy.*

1936

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